

THE FRESH START

A Periodic Newsletter from the United States Trustee Offices for
Region 11-Wisconsin and the Northern District of Illinois

FALL 2003

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From the Desk of our U.S. Trustee

Since our last newsletter, the employees of the three offices comprising Region 11 have been very busy in carrying out the goals of the Program's Civil Enforcement Initiative. In brief, those goals are : 1) to ensure Chapter 7 is not abused and Chapter 7 debtors are held accountable; 2) to protect consumer debtors, creditors or others who are victimized by those who mislead or misinform debtors, make false representations in connection with a bankruptcy case or otherwise abuse the bankruptcy process; 3) to ensure that Chapter 11 debtors proceed promptly and are informed of, and held accountable for, their obligations under Chapter 11; and 4) to combat fraud and abuse by making criminal referrals and assisting United States Attorneys in criminal prosecutions.

Since January of this year in excess of 250 cases have been the subject of either §707(b) inquiries or have had motions filed under §707(b). As a result in excess of two million dollars in unsecured debt has been prevented from being discharged.

During the same period in excess of 100 cases have been the subject of either §727 inquiries or have had motions filed under §727. As a result in excess of \$7,750,000 of unsecured debt has not been discharged. Additionally, since January of this year all three offices in Region 11 have successfully prosecuted complaints against petition preparers under §110, successfully objected to the employment of professionals under §§327 and 1103 and successfully disgorged professional fees under §329.

In Chapter 11, over 200 cases were the subject of either inquiries on whether conversion/dismissal was appropriate or had motions to dismiss or convert filed under §112(b). Ninety-one of those cases were ultimately either converted or dismissed. Additionally, in 18 cases the disclosure statements were modified and in eight cases confirmation was denied as a result of objections filed under §§1125 and 1129.

Finally, all three United States Trustee Offices (USTO) have been active in referring criminal

matters to the United States Attorneys Offices in their districts. The results of some of those referrals are detailed in the pages that follow.

Protecting the integrity of the bankruptcy system is a never-ending process. Because bankruptcy is a self reporting system, the accurateness of the schedules and statements of financial affairs is solely dependent on the honesty of the debtors and the quality of the legal advice they receive. We in Region 11 will be ever vigilant in rooting out those who would attempt to abuse the system and those who prey on unsuspecting debtors and creditors. I am proud of our successes and the men and women of Region 11 who on a daily basis help prevent abuses and preserve the integrity of the bankruptcy system.

National News

Lawrence Friedman, Director of the Executive Office for United States Trustees, spoke at the National Association of Chapter Thirteen Trustees' annual seminar in Chicago on July 18, 2003.

News from Region 11

In early 2003, three new judges were appointed to serve on the Bankruptcy Court for the Northern District of Illinois. Attorney and Chapter 7 trustee Pamela Hollis, Assistant Illinois Attorney General A. Benjamin Goldgar and Cook County Circuit Judge Jacqueline P. Cox were appointed to serve 14 year terms. The Northern District of Illinois trailed only the Central District of California in cases filed in fiscal 2002. With some of the biggest corporate cases filed in Chicago during 2002, caseloads for the bankruptcy bench have been

higher than the national average. The three new judges filled vacancies in Chicago created when Judge Robert Ginsberg took senior status, Erwin Katz joined the firm of Greenberg Traurig and Ronald Barliant joined the Goldberg Kohn firm. Chicago's Assistant United States Trustee (AUST) Sandra Rasnak was recently named Acting Deputy Chief of Criminal Enforcement for the United States Trustee Program (USTP). Sandra and Peter J. Ainsworth, the newly named Chief of the Program's Criminal Enforcement Unit, will lead a team of Regional Criminal Enforcement Coordinators. The Unit will design and manage a national program to increase detection and prosecution of fraud and other criminal conduct within the bankruptcy system, coordinate with United States Attorneys in the referral, development, and prosecution of cases, and work closely with federal investigative agencies.

On January 8, 2003, AUST Sheree Dandurand spoke to the Western District of Wisconsin Bankruptcy Bar about substantial abuse.

On March 6, 2003, the annual Chapter 7 Trustee Seminar was once again held in Chicago at the East Bank Club. Director Friedman was the keynote speaker, emphasizing the Program's Civil Enforcement Initiative, and encouraging trustees not to overlook the potential in administering small asset cases.

During April 21-23, 2003, Paralegals Jennifer Conrad (Chicago) and Maureen Gaber (Madison) attended Business Finance Training at the National Advocacy Center (NAC) in Columbia, S.C.

On April 25, 2003, United States Trustee (UST) Ira Bodenstein spoke at the Wisconsin State Bar Seminar in Eau Claire, Wisconsin on the Civil Enforcement Initiative.

On April 28, 2003, AUST Sheree Dandurand spoke to a class at the University of Northern Illinois Law School at DeKalb about the UST role in Chapter 11 cases.

On May 7, 2003, Director Friedman attended the annual meeting of the Wisconsin State Bar, discussing the Civil Enforcement Initiative.

On May 10, 2003, Madison Legal Clerk Amy Pemberton married Matthew Brandup. Congratulations to Amy and Matthew, and best of luck as they embark on married life.

On May 16, 2003, AUST Sheree Dandurand spoke at a Paralegal Association of Wisconsin conference on civil enforcement and new legislation.

During this past summer, the Chicago office received valuable assistance from four student externs. The students performed a variety of assignments, including substantial work in the civil enforcement area. Mary Wilson Barry, in her last year at John Marshall Law School, is as an extern this fall with Judge Sonderby. James Stephenson is in his second year at DePaul Law School, and Melanie Zatarski is in her second year of law school at Northwestern. Completing our group this past summer was Brian Hercule, in his junior year at St. Louis University. We were extremely fortunate in having the services of these outstanding individuals and wish them well in their

future careers. On September 2, 2003, Steve Caravajal began working as a student extern with the Chicago office. Steve is in his third year of law school at DePaul, and is a proud graduate of last year's College National football champions, Ohio State. Steve worked as an extern this past summer at Chicago Volunteer Legal Services. The senior law students are particularly helpful since they can actually appear and represent the office in court under our supervision. The Chicago office has a senior law student extern starting spring 2004.

On June 6-7, 2003, UST Ira Bodenstein spoke at the American Bankruptcy Institute Midwest Bankruptcy Conference, Traverse City, Michigan on indemnification of professionals in Chapter 11 cases.

During the week of June 9, 2003, Deputy Director Martha Davis, Associate Director Jeff Miller and Acting Assistant Director for Review and Oversight Sara Kistler visited the Chicago office.

UST Ira Bodenstein, Senior Bankruptcy Analyst Chip Wilkes and Standing Chapter 13 Trustee Marilyn O. Marshall participated in training for 17 new Chapter 13 bankruptcy trustees June 24-26 at the National Bankruptcy Training Institute (NBTI) at the NAC. This is the first time the Program has provided national training to newly appointed Chapter 13 trustees. Training topics included case administration, office administration, internal controls, financial administration, and civil and criminal enforcement.

On July 14, 2003, the Chicago office welcomed Paralegal Maria Shake as a new employee. Maria

worked at small law firms in consumer bankruptcy work, including foreclosure work, general creditor work and representation of debtors.

On August 11, 2003, the Chicago office welcomed Honor's Program attorney Cameron Gulden, a 2001 University of Minnesota Law School graduate. After graduation, he clerked for U.S. Bankruptcy Judge Gregg Zive in Reno, Nevada, and, prior to law school, worked as a copywriter. Since Cameron is from Minneapolis, these unpredictable Chicago winters should be a piece of cake for him. We hope Cameron and his family, which includes four children, like the Chicago area.

During the week of July 28, 2003, Bankruptcy Analyst Bob Wakefield (Chicago) attended Advanced Civil Enforcement Training at the NAC. AUST Sandra Rasnak was an instructor.

During August 18-21, Chicago Paralegals Maria Shake and Jennifer Conrad attended Paralegal Litigation Support training at the NAC.

During the week of August 25, 2003, Chicago's Paralegal Sylvia Brown attended the Blacks in Government 25th Annual National Training Conference in Denver.

On August 25, 2003, the Milwaukee office welcomed attorney Amy Ginsberg. Amy is a 1992 graduate of Ohio State University College of Law and is an alumnus of Oberlin College. Amy was in private practice with a Kansas City, Missouri firm specializing in bankruptcy and creditors' rights prior to joining the Milwaukee staff - this will make her a tremendous asset in the Civil

Enforcement Initiative. Amy is joined by her husband and two daughters. Although she's been living in Kansas for 12 years, she is a Brooklyn, New York native, so the Northern climate shouldn't be too shocking to her - her girls, however, may have some thrills and *chills* in store.

During the week of September 2, Chicago Attorneys Gretchen Silver attended Bankruptcy Fraud Training, and Cameron Gulden attended Advanced Civil Enforcement Training at the NAC. AUST Sandra Rasnak was a featured instructor.

On September 8, 2003, AUST Sandra Rasnak participated in panel discussions on civil enforcement and bankruptcy fraud at the Annual Convention of the National Association of Bankruptcy Trustees, held in Washington, D.C.

Recent Region 11 Prosecutions

On November 21, 2002, Allan Wade was sentenced to 41 months imprisonment, three years supervised release and restitution of \$5,655,347. Wade pleaded guilty to fraud and swindles charges contained in a one count information. Wade was president of Traffic Management, Inc., (TMI), a freight auditing and bill payment business. Under contracts with shippers, TMI was required to pay freight haulers for work performed on behalf of the freight shippers. In 2001, customers forced TMI into an involuntary Chapter 7. Wade defrauded his customers by collecting over \$5 million and converting money paid to TMI for his own use. The Chapter 7 trustee has so far been able to collect only \$377,000 to administer for the bankruptcy estate.

On December 18, 2002, the Honorable David H. Coar sentenced Ernesto G. Mutuc to 23 months imprisonment, three years supervised release and a \$4,000 fine. A jury found Mutuc, a technical consultant for a software design company, guilty of bankruptcy fraud and perjury. In his bankruptcy, Mutuc failed to disclose the sale and profit from sale of stock, and lied about a condominium purchase on the petition and in a deposition under oath.

On February 21, 2003, the Honorable Joan Humphrey Lefkow sentenced Hasan Dervisevic to 18 months imprisonment and three years supervised release, and his ex-wife, Martha Dervisevic, to five months imprisonment and two years supervised release. Both defendants pleaded guilty to concealment of assets, false oaths and claims bribery.

On March 6, 2003, John F. Rath was indicted in a six-count indictment, on charges that included concealment of assets and false declarations. Rath filed a Chapter 7 case in 1998, allegedly falsely representing among his assets: bank accounts containing \$1,400, when they actually had balances of \$10,000; no interest in pension or profit-sharing plans, when he owned a 401K plan with a balance of \$129,000; and ownership of only one racehorse, when he allegedly had ownership interests in four horses. A trial date was set for October 2003.

On April 8, 2003, the Honorable Harry D. Leinenweber sentenced Gary L Mingle to one year and one day imprisonment, two years supervised release, and a \$3,000 fine after Mingle pleaded

guilty to a one count information charging him with concealing assets. After creditors forced his industrial equipment leasing company into bankruptcy, Mingle concealed \$50,000 of savings bonds and a Mercedes worth \$50,000.

On May 13, 2003, Thomas Lee Zemblidge was sentenced to 36 months probation. Zemblidge and his wife, Mary Louise Zemblidge, pleaded guilty to bankruptcy fraud, after both were indicted on three counts each of concealing assets in a 1999 bankruptcy case. The couple allegedly concealed from creditors their stake in a 1997 personal injury lawsuit and failing to disclose the lawsuit while under oath at their §341 meeting. Mary Louise Zemblidge was expected to be sentenced in September 2003.

On May 13, 2003, the Honorable Elaine E. Bucklo sentenced Rhonda Payne to three years probation and restitution of \$63,568, after Payne pleaded guilty to bankruptcy fraud. By using false information, including false social security numbers, Payne obtained personal property, including cars, then filed two fraudulent bankruptcy petitions.

On August 26, 2003, the following three individuals were indicted for bankruptcy-related crimes in the Eastern District of Wisconsin:

1) Jean E. Marris was charged in a three-count indictment for allegedly making false statements during bankruptcy proceedings. On August 23, 1999, Marris, filed for Chapter 7 bankruptcy. In June 1999, Marris sold a house in Cedarburg,

Wisconsin and allegedly made a false declaration when she submitted her Statement of Financial Affairs. Marris concealed from a bankruptcy judge that she had sold property and received \$135,000 as a result of the sale. Marris further failed to disclose she had sold or transferred property to anyone in the 12 months prior to the case being filed. Marris also allegedly failed to disclose to the trustee that she had paid anyone more than \$600 in the 90 days before filing her bankruptcy petition, when, approximately two months prior to the filing date, she made a \$25,000 payment to an attorney to commence a lawsuit against the City of Cedarburg.

2) Cheri Hoffman was charged in a two-count indictment for allegedly making false statements during bankruptcy proceedings. Hoffman filed a Chapter 13 bankruptcy. At a bankruptcy hearing, Hoffman presented fraudulent letters from a bank and altered money orders as proof of payments towards her Chapter 13 plan to avoid foreclosure of her residence.

3) Nelida Arroyo-Pharm was charged in a four-count indictment for allegedly embezzling \$6,264 from her employer, a Standing Chapter 13 Bankruptcy Trustee for the Eastern District of Wisconsin. According to the indictment, Arroyo-Pharm allegedly altered money orders and cashier's checks received from other Chapter 13 debtors and applied the embezzled funds as payment into her own Chapter 13 bankruptcy account.

On September 10, Harrison Jeffries was sentenced to three years probation, four months home confinement and barred from ever filing a

bankruptcy case on behalf of another person, after pleading guilty to false declarations charged in an October 3, 2002 information. From 1990 to 2000, Harrison filed 17 bankruptcy petitions using fraudulent names and social security numbers to delay foreclosure on his property. After each of the 17 cases was dismissed, Jeffries was aware he could not file another bankruptcy case for 180 days because a bar was in effect. Jeffries filed these cases under "Harrison Jeffries", "Harrison Jeffries & Associates", and "C&J Enterprises, Inc".

Recent Court Decisions

Here are reports on two cases that the Supreme Court will decide next year from our own 7th Circuit:

Till v. SCS Credit Corp., 301 F.3d 583 (7th Cir. 2002) Certiorari granted: 06/16/03 The issue in this case is what formula a court should use to determine the interest rate a debtor must pay to a creditor for collateral the debtor may keep after declaring bankruptcy. Lee and Amy Till (the Tills) jointly filed for a Chapter 13 case. Under Chapter 13, a debtor may keep some of the collateral used to secure loans on which the debtor has since defaulted. The debtor must continue to make payments to the creditor to cover the cost of the collateral. The debtor must also pay interest to the creditor to reimburse the creditor for the delay in receiving the value of the collateral. SCS Credit Corporation (SCS), a creditor of the Tills, felt that the interest rate that they would have to pay was insufficient to cover SCS's loss of the collateral, and objected to confirmation of the bankruptcy plan. The United States Bankruptcy Court for the Southern District of Indiana overruled SCS's

objection, finding that the interest rate was calculated under a formula method, and as such, was correct. SCS appealed, arguing that the correct method was the coerced loan approach, which allows a creditor to receive the rate it would have earned had it foreclosed on the collateral and used the proceeds to issue a new loan. The United States District Court for the Southern District of Indiana reversed, holding that the correct formula is the coerced loan approach. The United States Court of Appeals for the Seventh Circuit reversed, holding that although the coerced loan approach was generally correct because its opinion elaborated on how to apply it, the judgment of the District Court should be vacated and remanded for further proceedings consistent with the Court of Appeals's elaboration.

In Re Kontrick, 295 F.3d 724 (7th Cir. 2002), *petition for cert. granted sub nom Kontrick v. Ryan*, 123 S.Ct. 1899, 155 L.Ed.2d 824, 71 USLW 3400, 71 USLW 3675, 71 USLW 3678 (U.S. April 28, 2003) (NO. 02-819). A judgment creditor objected to the Chapter 7 debtor's discharge. On a motion for summary judgment the Bankruptcy Court denied discharge and the district court affirmed. The Court of Appeals affirmed, holding that the 60-day time limit for filing objections to discharge is not jurisdictional, but is subject to equitable defenses, that the Chapter 7 debtor had waived his statute of limitations defense and that summary judgment had been properly granted.

On June 27, the Bankruptcy Court for the Eastern District of Wisconsin entered orders in five cases granting the USTO's motions under 11 U.S.C. §329 against attorney Allen Rittenhouse. In each

case, the court ruled Rittenhouse was entitled to no compensation for services. His substandard representation included filing blank bankruptcy schedules, hiring a substitute attorney to attend debtors' §341 meetings, and filing misleading briefs in which he copied and pasted text from court opinions without attribution.

On August 28, the District Court for the Northern District of Illinois affirmed the bankruptcy court's decision to deny debtor Terry Spirk's attempt to discharge more than \$9 million in unsecured debt incurred through the sale of high rate promissory notes to individual investors, many of whom were elderly or disabled. The Chicago USTO and the Chapter 7 trustee had filed complaints asking the bankruptcy court to deny Spirk's discharge under, *inter alia*, 11 U.S.C. § 727(a)(5) and (7). After the bankruptcy court granted the trustee's motion for summary judgment, the UST obtained leave to intervene in the trustee's adversary proceeding. The UST also objected to the debtor's motion to reconsider in the bankruptcy court and filed an appellee's brief in the appeal to the district court.

Notable Chapter 11 Developments

On February 11, 2003, Rand McNally & Company filed a Chapter 11 case, which included a prepackaged plan. With financial restructuring and recapitalization complete, Rand McNally emerged from bankruptcy after obtaining approval of the plan March 18, 2003. With the rapid conclusion of this reorganization, the court closed the case. May 28, 2003. The privately held 147 year-old company is the largest seller of maps in the world.

Its products include printed maps, atlases, guidebooks and satellite mapping tools.

On April 7, 2003, Eagle Food Centers, Inc. filed for Chapter 11 protection. The supermarket chain, operating 61 supermarkets in Illinois and Iowa, listed assets of \$180,000,000 and debts of \$177,440,000.

Based on the objection of the UST's Chicago office, on April 14, Chapter 11 debtor KMart Corporation withdrew its request for court approval of a purported joint venture agreement with unsecured creditor Kimco Realty Corp., under which Kimco would help KMart identify and negotiate agreements with potential purchasers of KMart's closed store properties. The agreement granted Kimco a sliding scale percentage of the net sales proceeds and allowed Kimco to bid on the properties. The UST learned of the agreement from a reference in a court pleading and, upon investigation, advised KMart that Kimco would be acting as a professional without court approval. KMart then sought approval of the agreement under 11 U.S.C. § 363(b). The UST objected, arguing that KMart was attempting to avoid §327(a)'s strict disclosure requirements and conflict prohibitions. KMart withdrew its motion, stipulating that the agreement would be amended to take effect upon the reorganization plan's effective date, Kimco could not receive compensation for post-petition services under the agreement, and Kimco could not bid on closed store properties.

On June 24, 2003, the Bankruptcy Court for the Northern District of Illinois entered an order approving the UST's request for appointment of

an examiner in five Chapter 11 cases, all related to RHC/Spacemaster Corporation. After the debtors tried to derail a \$44 million dollar auction sale of substantially all their assets for a deal which would have resulted in insiders owning certain of the assets, thus depriving the estate of further competitive bidding for the assets, the UST filed a Motion to Appoint a Trustee. After a trial on the UST's motion, John R. Schmidt was appointed examiner to oversee the sale process and to investigate the debtors. The examiner conducted the auction sale which resulted in competitive bidding between two industry players and a sale price of \$47 million. In addition, the examiner issued a report which concluded that the debtors' Board of Directors breached their fiduciary duty to the creditors by failing to continue the sale process in a fair and competitive fashion.

On July 31, the Bankruptcy Court for the Northern District of Illinois sustained the UST's objection to confirmation of Chapter 11 debtor SHC Corp.'s reorganization plan. Publicly owned SHC and its subsidiaries operated and sold payday loan store franchises. The plan called for an investor group to receive 75 percent of newly issued stock in the reorganized debtor in exchange for a pre-petition loan to a subsidiary. The Chicago office argued the plan's main purpose was to grant a controlling interest in a publicly held corporation without complying with federal securities registration requirements, in violation of 11 U.S.C. §1129(d).

Civil Enforcement Actions **Petition Preparers**

On February 6, the Bankruptcy Court for the Northern District of Illinois held bankruptcy petition preparer Corey R. Henderson in contempt and ordered him taken into custody for up to six months or until he paid minimum fines of \$2,000 for his failure to abide by a July 2002 agreed order enjoining him from acting as a petition preparer. Henderson continued to prepare petitions, and misrepresented that they were prepared by another individual.

On February 10, 2003, an agreed injunctive order was entered permanently enjoining Christine Weeks from serving as a petition preparer in the Northern District of Illinois. A \$1,500 fine was stayed provided Weeks complied with terms of the order, which included providing the USTO with a list of cases in which she was the petition preparer. Weeks failed to disclose her role as a petition preparer, violating §110 of the Bankruptcy Code.

Denial of Discharge

On February 19, the Bankruptcy Court for the Western District of Wisconsin entered a default judgment denying a Chapter 7 discharge to George A. Boswell, resulting in non-discharge of over \$4 million in debt to numerous individuals. The Madison office filed a complaint under 11 U.S.C. §727 alleging that Boswell fraudulently continued to solicit funds from individual investors during his Chapter 11 case, and fraudulently described the receipts as bank loans on his monthly reports. The case was converted from Chapter 11 to Chapter 7 in September 2002.

On April 2, 2003, the Bankruptcy Court for the Northern District of Illinois-Western Division

entered a default judgment denying discharge to Richard B. Lunde, resulting in non-discharge of over \$2.1 million in debt. The Madison office filed a complaint under 11 U.S.C. §727 alleging that Lunde failed to comply with court orders and the Chapter 7 trustees' requests in both his individual case and a related corporate case.

On June 15, 2003, the Bankruptcy Court for the Northern District of Illinois denied the discharge of Vanessa Lash a USTO filed objection. Lash filed a Chapter 7 case on April 22, 2003, but had received a discharge on February 1, 1998 from an earlier Chapter 7 filed, and not entitled to a discharge.

On July 29, 2003, the Chicago USTO filed an objection to the discharge in the Chapter 7 case of Monia L. Connors, who filed her case March 19, 2003. Since the debtor had last filed a Chapter 7 case in 1998, received a discharge August 8, 1998, and was not entitled to a discharge in the 2003 case, the Bankruptcy Court granted the USTO's objection.

Waiver of Discharge

On July 1, the Bankruptcy Court for the Northern District of Illinois approved debtor Alfonso Molina's voluntary waiver of discharge. The USTO objected to discharge after the debtor falsely testified under oath and showed a counterfeit Social Security card at the §341 meeting. The Court also partially disgorged the fees of the attorney, Herbert "Drew" Elesh.

§707(b)

On February 18, Chapter 7 debtor Rebecca Jane Moore converted to Chapter 13 in the Northern

District of Illinois rather than contest the “substantial abuse” motion filed by the UST. The conversion resulted in non-discharge of \$62,528 in unsecured debt. Moore had \$2,119 in excess monthly income, sufficient to fund a 100 percent Chapter 13 plan over 30 months.

The Chicago office recently investigated a joint Chapter 7 case in which the husband and wife both used false Social Security numbers on their petitions. Based on the UST’s actions, the Bankruptcy Court denied discharge May 19.

The Chapter 7 case of Radio Hall of Fame disc jockey Richard O. “Dick” Biondi was dismissed May 29 by the Bankruptcy Court for the Northern District of Illinois, preventing discharge of \$177,564 in unsecured debt. Based on Biondi’s schedules showing \$5,789 in excess monthly income, enough to fund a 100 percent Chapter 13 plan in 22 months, the USTO asked the court to dismiss the case for “substantial abuse” under 11 U.S.C. § 707(b). Biondi argued that his debts were not “primarily consumer debts” as required for dismissal under that provision. Biondi’s primary debt was his union’s judgment against him for fraudulently obtaining health benefits for his former spouse. The court concluded his debts were “primarily consumer debts,” and dismissed the case with the option to convert to Chapter 13. On August 1, 2003, Biondi filed an appeal with the United States District Court.

On June 17, 2003, the Chicago USTO filed a §707(b) complaint against Patrick J. Allen alleging that the case should be dismissed due to his insistence on maintaining his luxury residence

which he valued at \$715,000, while discharging his debt. After negotiations with the Chapter 7 Trustee and the UST, Allen agreed to sell and market his residence and his non-debtor spouse agreed to consent to the sale and waive any rights she held under tenancy by the entirety. A motion to sell the real estate is pending for the purchase price of \$793,000, which will result in substantial equity for the estate and will lead to a fair distribution to unsecured creditors.

The Bankruptcy Court for the Eastern District of Wisconsin on July 22 granted the motion of the Milwaukee office to dismiss the case of Jerome and Audie Kobes for substantial abuse, but allowed the debtors to convert to Chapter 13. The debtors claimed monthly income of \$3,665 and monthly expenses of \$3,433, including payments of \$800 on three reaffirmed debts – two to dentists and one to a finance company for an unsecured debt. The UST showed that if the \$800 in payments were reallocated, the debtors could repay more than 90% of their unsecured debt in Chapter 13.

On September 4, on a motion of the Chicago UST office, the Bankruptcy Court for the Northern District of Illinois dismissed the Chapter 7 case of Larry J. Thomas’ case for substantial abuse, preventing a discharge of \$123,919 in unsecured debt. Thomas sought to retain two residential properties and three luxury cars, including a Cadillac Escalade and a Cadillac DeVille.

Credit Card Bustouts

On August 20, the Bankruptcy Court for the Northern District of Illinois denied the discharge of Debtor Nafees Durrani, following a trial on the UST’s complaint. Durrani, who had accumulated

approximately \$175,000 on 20 credit card accounts, provided explanations of the numerous cash advances reflected by his credit card records, but was unable to provide any records documenting his explanations, and asserted that large cash transactions were common in his culture. The court rejected this cultural defense and denied the discharge on the basis of failing to maintain adequate records under §727(a)(3), and failing to provide a reasonable explanation of the disposition of the cash proceeds.

On August 21, the UST obtained a default judgment denying the discharge of Nael Hamadeh, who accumulated \$280,000 on approximately 15 credit card accounts. Following the §341 meeting at which Hamadeh appeared and testified, the UST issued a formal document request to the debtor and subpoenas to the credit card issuers. In response, Hamadeh's counsel advised he was called to Jordan on a medical emergency, crossed into his native country of Syria to visit relatives, and was conscripted to serve in the Syrian army. Counsel produced no evidence of this version of events other than a double hearsay statement, and the UST prosecuted his complaint.

On September 4, the Bankruptcy Court for the Northern District of Illinois approved the waiver of discharge by Chapter 7 debtor Kaizar A. Marvi, who listed approximately \$225,000 in debt on about 20 credit card accounts and testified at his Section 341 meeting that most of the debt arose from gambling. Through discovery, the UST learned that in two days Marvi engaged in approximately 20 transactions in a scheme

resembling check kiting. He executed numerous balance transfers including several transfers of \$40,000, which was the cash advance limit on some of his credit cards. Credit card company documents further revealed Marvi reported income and assets substantially greater than the amounts listed in his petition. Marvi waived discharge after the UST showed this information to his counsel.

On September 11, an order was entered approving waiver of discharge, a one year refiling bar and case dismissal in the Chapter 7 case of Max Salem, who had accumulated \$238,000 in debt, supposedly while running a jewelry store. Chicago trustee Rick Fogel received numerous complaints from jewelry vendors which suggested an intentional bust-out pattern, which, together with additional information from Salem's ex-spouse, suggested that Salem was engaged in some very bad activities. Mr. Fogel was successful in obtaining a waiver of discharge from Salem.

CM/ECF Update

As you all know, the Clerk's Office for the Bankruptcy Court for the Northern District of Illinois has now implemented the transition to the Case Management, or CM, system. The new system is fully apparent to anyone who reviews a case docket, claims or other court matters via the internet. From the perspective of the clerk's staff charged with managing and implementing this conversion, the conversion has been both challenging and difficult. The clerk's staff has devoted substantial time and effort to preparing for this transition and for resolving problems and continues to do so.

The next major steps include: 1) the development of rules, which are in the form of Administrative Procedures, to be used for filing documents electronically; and 2) selecting attorneys, including two or three trustees, who will be “pilots” in the electronic filing era. The proposed Administrative Procedures are now available for public comment through September 30; following that, it is anticipated that the judges will approve some form of the Procedures, which will provide the procedural rules for electronic filing. The “pilot” phase is expected to commence around October 1st. The clerk’s office is projecting January 1st as the time frame for permitting electronic filing. Individual attorneys will be required to complete training in order to obtain authorization for filing documents electronically. The clerk has substantial information available on the court’s website.

For more information about this newsletter, or for additional copies, please contact: Alfreda Baran, Bankruptcy Analyst, USTO, 227 West Monroe, Suite 3350, Chicago, Illinois 60606, (312) 886-5785, or email: alfreda.baran@usdoj.gov